CFPB Reports Continued Mortgage Servicing and Other Violations of Consumer Financial Law

July 08, 2015

In its Supervisory Highlights recently released, which cover the period from January to April 2015, the Consumer Financial Protection Bureau ("The Bureau") reported its examination observations in consumer reporting, debt collection, mortgage origination and servicing, fair lending, and student loan servicing. According to the report, the Bureau found violations of mortgage servicing loan modification regulations, including dual tracking, lack of quality control by credit reporting agencies in generating accurate consumer reports, fair lending violations, and improper handling of complaints by debt collection companies. While the entities described in the report as having violated consumer financial laws are not named, many of the violations described have resulted in actual enforcement orders providing injunctive and monetary relief. Specific violations identified include the following: **Mortgage**

Servicing Violations

- **Loss mitigation applications.** The CFPB's new RESPA loss mitigation rules include procedural requirements for soliciting and evaluating loss mitigation applications (LMAs) from borrowers. For example, within five business days of receiving a LMA, a servicer must send the homeowner written acknowledgment of receipt, advise whether the application is or is not complete, and if not complete, identify what is missing. Violations of loss mitigation rules mentioned in the report include:
    - failing to send the required loss mitigation notices five days after receiving an LMA
    - requesting additional documents from borrowers which had either been previously submitted, or were inapplicable to their circumstances
    - disclosing terms of a payment plan deferring payments in a deceptive manner
    - failing to honor trial modifications after servicing transfers, causing delays in converting trial modifications to permanent modifications and resulting harm to borrowers.
- **Dual Tracking/ Foreclosure Process.** The report describes findings of **"**unfair and deceptive practices" in the foreclosure process. For example, a servicer sent notices of intent to foreclose to borrowers previously approved for trial modification before the first payment under the trial modification was due. This "dual tracking," according the Bureau, "could mislead consumers to believe the servicer had abandoned the trial modification," and was therefore found to be a deceptive practice. Servicers were directed to modify and track notices of intent to foreclose, and to clearly and conspicuously state whether such notices impacted any pending loss mitigation offers. Notices sent by another servicer to borrowers who were current on their loans which stated, due to a systems error, that foreclosure was imminent, were also cited as a deceptive practice.
- **Fair lending violations.** Lenders who denied or discouraged mortgage applications from consumers because they would have relied on public assistance income in order to repay the loan, were identified as violating the Equal Credit Opportunity Act. The Bureau required the institutions to change their policies and provide remediation to applicants.
- **Debt collection Complaints Disregarded.** Debt collection companies were found to have inadequate compliance management systems to prevent violations of federal consumer financial law because companies did not properly train personnel or log, record, or categorize consumer complaints, including complaints that were resolved by agents. At some collectors, complaints and inquiries remained in an electronic queue and were never reviewed or resolved. Debt collectors also failed to conduct investigations of disputes.

As explained in the report, the CFPB prioritizes its supervisory responsibilities based upon risks to consumers. In calculating the risk of harm to consumers, the Bureau identifies product lines, evaluates them across institutions to determine consumer risk at a market level, and also, at an institutional level, taking into account a supervised entity's market share within an individual product line. When CFPB examiners find what they believe to be violations of law or other significant problems, they notify the institutions and outline necessary remedial measures. As part of the examination process, the Bureau may send a Potential Action and Request for Response (PARR) letter to an entity, notifying it of preliminary findings of violations of federal consumer law, and that the Bureau is considering taking supervisory action, which may be a non-public memorandum of understanding or a public enforcement action, based on the violations identified in the PARR letter. Thus, the Bureau often finds problems during supervisory examinations that are resolved without an enforcement action. According to the report, recent non-public supervisory actions and self-reported violations at banks and nonbanks mortgage servicing, mortgage origination, deposits, payday lending, and debt collection resulted in $11.6 million in remediation to more than 80,000 consumers. This is in addition to approximately $22 million in monetary and civil remedies ordered in public enforcement orders announced between January and June for violations of the Truth in Lending Act, Electronic Funds Transfer Act, Fair Debt Collection Practices Act, Fair Credit Reporting Act, and the deceptive acts and practices prohibition of the Consumer Financial Protection Act (CFPA). The Bureau continues to rely heavily on the deceptive practices prohibitions in the CFPA in its enforcement actions with violations of that act forming the basis of half the monetary provisions in its enforcement orders during this period. **Full report:** "Supervisory Highlights," Consumer Financial Protection Bureau (Summer 2015).

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